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Daniel R. Deutsch  
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August 29, 2007

**VIA ELECTRONIC MAIL  
AND FIRST CLASS MAIL**

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423

**RE: STB Finance Docket Number: 34797**

Dear Secretary Williams:

Enclosed for filing, please find:

1. Reply of Town of Wilmington to Petitioner's Submission of Supplemental Information, With Accompanying Exhibits "A" through "C"; and
2. Certificate of Service

Thank you for your consideration and cooperation in this matter. Copies of this letter and its enclosures are being sent simultaneously to counsel for the interested parties, as indicated on the attached certificate of service. Please contact me with any questions concerning this filing.

Very truly yours,

/s/ Daniel R. Deutsch

Daniel R. Deutsch

DRD:es  
Enclosures as stated

cc: Service List  
Town of Wilmington  
Attn: Michael A. Cairra, Town Manager  
Paul R. DeRensis, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 34797**

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Petitioner  
for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail  
Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts**

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**REPLY OF TOWN OF WILMINGTON  
TO PETITIONER'S SUBMISSION OF  
SUPPLEMENTAL INFORMATION**

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The Town of Wilmington, a party to this proceeding, hereby responds to the August 9, 2007 Submission of Supplemental Information by the Petitioner, New England Transrail, LLC ("NET") ("Submission"), which undersigned counsel received by mail only on August 20, 2007.

Wilmington does not oppose rail transportation as such. Wilmington does oppose (i) the grossly premature and inappropriate redevelopment of the unstable Olin Superfund site as it undergoes an EPA-sponsored Remedial Investigation and Feasibility Study (RI/FS), (ii) with an intensive truck-to-rail transloading operation (and waste processing facility) that would place enormous static and live seismic loads directly above an underground contaminant containment structure,<sup>1</sup> thereby possibly pumping existing contaminants throughout the surrounding

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<sup>1</sup> NET's proposed operation is situated so directly above the dense aqueous phase layer (DAPL) containment area that NET has agreed, if the project were permitted, to assume from Olin Corporation the cost of building an asphalt cap over the DAPL. This single assumption of Olin's obligations is not coincidental. Yet, NET has never provided STB or SEA with engineering data to demonstrate that such an asphalt cap would protect the DAPL.

groundwater and neighborhoods, and exacerbating problems in Wilmington's designated public water supply district, (iii) by a proponent whose assertion of financial viability does not estimate or adequately evaluate the huge costs and necessary financial guarantees associated with the alteration and use of an unresolved Superfund waste site, not to mention the environmental damage and corporation-crippling liability that could flow from this activity at a particularly vulnerable site.

Even in the context of review for authority to construct, NET's assertion that its proposed project is "in the public interest" and that it "enhances public health and safety" (*see* NET Submission, at 8) are wishful thinking, if not peposterous. As this Board has observed, the property in question is "a notorious, environmentally contaminated 'Superfund' site . . ."<sup>2</sup> In its recent comment letter to this Board, the US EPA has advised that the Olin site is just now undergoing the statutorily mandated RI/FS and urged the Board not to conduct an environmental impact review until after relevant portions of the RI/FS have been completed. The federal agency charged with environmental compliance and safety at the Olin site thus affirms that it is premature not only to redevelop the site but also to make judgments about the environmental appropriateness of the proposed redevelopment.<sup>3</sup> An appropriate determination whether the proposed rail service and waste operations are "in the public interest" cannot prejudice relevant findings of other agencies or ignore the broad adverse implications - if not downright incompatibility - of site conditions for a railroad-based operation.<sup>4</sup>

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structure from the burden of thousands of tons of seismic loads – buildings, trucks, rail cars, heavy machinery, stored commodities, and concrete vaults – that NET proposes to place above it

<sup>2</sup> See STB Decision dated June 29, 2007, at 2

<sup>3</sup> See EPA Comment Letter dated April 6, 2007

<sup>4</sup> Wilmington annexes hereto at Tab "A" a reference copy of its November 4, 2003 initial comment letter to the SEA's designated outside environmental analyst in connection with the NET's original petition (STB FD 34365).

NET's Submission is rife with generalizations about the wisdom of expanded rail service within the United States. No one contests the need for expanded rail operations nationally. However, the issue at hand is whether the public interest would be served by authorizing the construction and operation of this particular project at this particular location. NET ignores all local implications of its proposal, including those bearing directly on public health and safety. NET touts the ostensible environmental advantage of rail over truck transportation. However, it is manifestly unreasonable to invoke that generic advantage in support of this project -- a transloading and processing facility that would depend on several hundred truck round trips each day to import waste, debris and assorted other materials to a short line railroad<sup>5</sup>, that would involve untold hours of idling and rearrangement of locomotives and rail cars on an admittedly crowded site; that would not necessarily utilize locomotives subject to current EPA pollution restrictions; and that, by diverting regional truck traffic and concentrating it at the site, would exacerbate documented traffic hazards on the immediately surrounding roads and intersections and create new public safety concerns.<sup>6</sup>

The project does not exist in the abstract and cannot be evaluated in a vacuum. Not every expansion of rail service in the United States serves the public interest. Were that so, this Board might wield a rubber stamp to confer its authority. Like the jurisdictional inquiry, the present inquiry must be project- and site-specific. This project must be judged as it is: the proposed, intensive, industrial redevelopment of a site that is not yet physically, chemically, or legally appropriate for redevelopment.

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<sup>5</sup> According to NET filings, the facility contemplates "400 truck trips . . . and a train of about 25 railcars on average, six days a week . . ." See NET's May 15, 2005 Petition for Reconsideration from this Board's dismissal of NET's prior petition for exemption (FD 34391, at 15).

<sup>6</sup> See Verified Statement of Michael R. Begonis dated August 29, 2007 (annexed hereto at Tab "B") Mr Begonis is the Chief of Police of the Town of Wilmington. See also Verified Statement of Gregory Erickson dated August 29, 2007 (annexed hereto at Tab "C") Mr Erickson has been the Director of the Public Health Department of the Town of Wilmington for 23 years.

NET thus has not met its burden on the issue of rail necessity and public interest. Its documentation – letters from the Westport, Connecticut Chamber of Commerce and from the Most Worshipful Hiram Grand Lodge A.F. & A.M., Inc. supporting the expansion of rail service in the Northeast, letters from rail industry lobbyists and railroad unions, and other wholly generic testimony on the virtues of rail transportation – does not demonstrate that NET’s own project would further rail transportation in a way that comports with the public interest and safety. Moreover, the dubious character of this project as primarily a rail facility and NET’s unreliability as a rail proponent are apparent from the written comments and testimony of established rail carriers at the Board’s April 19, 2007 hearing on preemption issues.<sup>7</sup>

NET’s Submission incorporates and relies on previous filings made by NET when the proposal was very different than it is now. As the Board is well aware, NET has a history of misrepresenting the scope and details of its project. It was this petitioner’s withholding of crucial information about its intended shredding, grinding and baling of waste that led this Board to dismiss NET’s previous petition for exemption. As the Board’s June 29, 2007 Order noted, that dismissal prevents the Board from considering NET’s earlier submissions as evidence to support authority to construct and operate the project as it is currently proposed. Indeed, NET reconfigured, massaged, and recharacterized its project in response to developing comments and concerns, right up to the start of the April 2007 hearing. Despite that revisionist history, NET is unable to resist the temptation of relying shorthand on its prior submissions.

The petitioner utterly and deliberately fails to address the expected impacts of its project on the local environment and community. This tactic underscores NET’s consistent efforts to avoid reasonable scrutiny of its project – by withholding material information from the STB, by

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<sup>7</sup> See, e.g., Position Statement of NYS&W Railroad dated April 16, 2007, at 3-4, Position Statement of CSX Transportation, Inc. dated April 16, 2007, at 5-7. These commentators raised pointed concerns with “sham” rail operations and the need to distinguish “bona fide” rail carriers.

invoking preemption for all waste processing, and by omitting necessary engineering data. NET seeks to ride the coattails of the railroad industry to obtain summary approval of a solid waste operation that masquerades as a railroad facility. It hopes to avoid any meaningful oversight of its selection of an inherently inappropriate site, a site occupied by an environmental mess, where human carcinogens have been discovered in the groundwater, and at which an environmental disaster is the foreseeable result of the proposed redevelopment. Because the fundamental environmental credentials of this proposal are so dubious, it would be both wrong and bad policy to declare the project consistent with the public interest at this juncture and thereafter impose numerous conditions in a futile effort to mitigate environmental damage.

Compounding the deficiencies of NET's evidence are the following considerations. NET asserts that it would employ "30-40 local workers" (*see* NET Submission, at 10). In fact, such modest gains would be erased if an NET waste processing and rail facility put others out of work. That is likely to result from a fast-track federal approval of NET's waste operations, which would give it a huge competitive advantage over waste processing companies in Massachusetts that have invested or would need to invest millions of dollars in enhancements to gain state and local site assignment permits, requirements which this Board has declared largely preempted in the case of NET's project.<sup>8</sup>

Also problematic is the Ketcham Engineering report attached to NET's Submission as Exhibit H. That report purportedly compares costs and impacts of transportation by long haul truck versus rail. However, it is misleading for present purposes because: (i) unlike Ketcham's model, NET's project would involve short haul trucking of waste and other materials to and from the rail yard; the report does not address transload facilities, like the one proposed; (ii) it does not

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<sup>8</sup> See testimony of New Bedford Waste Services, LLC at April 19, 2007 STB hearing, and presentations and past submissions of Coalition Parties, including National Solid Waste Management Association and Solid Waste Association of North America.

account for the costs, noise and polluting effects of the cranes and other heavy equipment that would be utilized in NET's "rail" operation, (iii) while trucks contribute wear to public roadways, they also contribute tax dollars to maintain those roadways, (iv) NET has not warranted that the locomotives it would use are subject to current EPA pollution control standards, as the report presumes, and (v) the report does not account for increased noise and pollution resulting from the repeated movement of rail cars and long periods of idling by locomotives at the NET transload/processing facility. Like NET's Submission generally, the report ignores relevant implications of this particular project for public health and safety in the particular "host" community.

This disregard for particulars also is reflected in NET's claim that it could weather any financial implications of the premature redevelopment project. NET's Submission, and the redacted Verified Statements of Messrs. Lyon and Jones attached to it, are purely conclusory when it comes to the costs of implementing environmental mitigation measures and other heavier financial burdens of altering and using a Superfund site in the midst of investigation and remediation. NET does not identify such costs or attach any rough number to them; it merely states that they have been "taken into account." Moreover, NET does not address the disruption and huge financial consequences that would result in the likely event that NET operations were interrupted or halted, or NET structures such as rail lines and concrete vaults were moved or demolished, due to future investigative findings or environmental remediation. That very real possibility has been acknowledged by NET itself in filings during SEA's environmental assessment of the previous (now dismissed) petition, when NET assured SEA that it would yield to any on-going environmental work at the site.

## **CONCLUSION**

The Town of Wilmington requests that the Surface Transportation Board deny NET authority to construct and operate the proposed transloading facility, because NET (i) has not demonstrated that the particular project at issue is in the public interest, including the public health and safety in the community in which the facility is proposed, and (ii) has not evaluated nor demonstrated that it can bear the foreseeable financial burden to it of all environmental implications of the project, including likely interruptions in rail service

Respectfully submitted,

TOWN OF WILMINGTON,

By its attorneys,

*/s/ Daniel R. Deutsch*

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# EXHIBIT A



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Daniel R. Deutsch  
dddeutsch@dwbboston.com

November 4, 2003

**BY HAND**

Neil Sullivan  
ICF, Incorporated  
9300 Lee Highway  
Fairfax, VA 22031

**RE: Comment of the Town of Wilmington –  
Surface Transportation Board Finance Docket No. 34365,  
New England Transrail, LLC**

Dear Mr. Sullivan:

As you know from our telephone conversation last week, this firm is counsel to the Town of Wilmington ("Wilmington"). In response to the September 30, 2003 letter from Victoria Rutson, Chief of the Section of Environmental Analysis ("SEA") of the Surface Transportation Board ("STB"), to former Town counsel, Michael Newhouse, Wilmington provides this comment to assist you and the SEA in your environmental analysis of the above-referenced project proposed by New England Transrail, LLC ("NET" or "Proponent") ("Project").<sup>1</sup> For the reasons detailed below, Wilmington urgently requests that you scrutinize the Project rigorously and that the Project be subject to a heightened level of analysis.

Wilmington attaches at Tab 1 and incorporates in this letter the written comments of Town officials, as follows:

- Director of Public Health;
- Conservation Commission, by Assistant Director of Planning and Conservation;
- Superintendent of Water and Sewer Department;
- Fire Chief;

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<sup>1</sup> As you advised during our telephone conversation last week, you are authorized to accept and consider comments from interested government agencies, including Wilmington, through and somewhat beyond the October 30, 2003 date stated in Ms. Rutson's September 30 letter. Your office will be reviewing information provided by federal, state and local agencies and thereafter preparing a written assessment, which will be open for comment by those agencies and other interested parties.

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- Chief of Police;
- Building Inspector;
- Assistant Town Manager;
- Superintendent of Public Works; and
- Director of Planning and Construction.

Those written comments supplement the comments and material that Wilmington previously submitted to the STB in connection with NET's Notice of Exemption. (NET later withdrew that Notice due to an unspecified error.) The enclosed comments provide detailed information beyond what is presented in this letter.

We also attach at Tab 2 and incorporate the July 10, 2003 report of GeoInsight, Inc., a multi-disciplinary environmental consulting and engineering firm retained by Wilmington. Wilmington submitted that report to the STB with its Supplement to a Petition to Stay the Notice of Exemption. GeoInsight has expertise in site assessment, remediation, and project siting issues. Among other matters, its report addresses the heightened tier classification and increasing scrutiny of the Project site by the Massachusetts Department of Environmental Protection ("DEP"), in light of the recent discovery of additional, carcinogenic contamination at the site and down gradient from it. The report attaches various explanatory documents. We enclose at Tab 3 a July 22, 2003 DEP letter to the site owner, Olin Corporation, which specifies a scope of work for the required assessment of the impact of that newly discovered contaminant, NDMA.

The enclosed materials address the following areas of concern, all of which are considerations identified by the STB's Environmental Rules, 49 C.F.R. § 1105:

1. Safety/Water/Biological Resources.

The 53-acre Project Site, a former Olin Corporation chemical plant at 51 Eames Street ("site"), has been designated one of the most complicated in Massachusetts by the Department of Environmental Protection ("DEP"). It has been under investigation for 12 years and has eluded complete understanding and classification. Redevelopment of the site as proposed would complicate the on-going efforts to investigate and remediate the site.

In its Response to Wilmington's May 2003 comments on its Environmental Report, NET cited previous DEP statements concerning the project previously proposed for this site. Dramatic recent discoveries have caused DEP to reexamine the contamination at the site and to intensify its investigation. A known carcinogen, N-nitrosodimethylamine (NDMA), was

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discovered in groundwater at the site and downgradient from it during the past year, after DEP declared the groundwater safe. The official DEP Zone II map for this area shows that the site is within the Zone II of the Maple Meadow Brook Aquifer (MMBA) and headwaters of the Ipswich River. Chemicals discharged over the years have entered the recharge area for municipal wells and contaminated over 60 acres of the MMBA. As a direct consequence, on February 28, 2003, Wilmington was forced to close five of its nine wells for the indefinite future and to purchase substitute water from the MWRA. The owner of the Eames Street site, Olin Corporation, has agreed to contribute up to \$3,000,000 to the cost of the necessary connections to MWRA facilities. (See Comments of Water and Sewer Superintendent, with attachments, and Director of Public Health.) Moreover, DEP recently requested and received comments from Wilmington concerning the appropriate scope of work for further investigation of groundwater contamination emanating from the site. (See enclosed July 22, 2003 DEP letter) Any hope of reactivating the closed wells depends on complete and reliable investigation and remediation of the site and the MMBA to which it contributes.

Furthermore, Lake Poly, a lagoon within the larger site, has been found to contain extensive contamination, including kempore. The Olin Corporation facility at this site produced kempore. NDMA may be a by-product of degraded hydrazine, and hydrazine was used in the production of kempore. The connection between previous site activities and NDMA is the subject of further investigation by DEP and others. Siting a detention basin near Lake Poly, as NET proposes, is inadvisable. Even Olin Corporation has objected to that aspect of the Project. In response to Olin's objection at a recent site visit, NET informally has suggested that it could redirect storm water through new underground pipes but it has not designed for this or addressed the implications for the site and remediation activities.

Likewise, the proposed rail facilities themselves could further aggravate groundwater pollution, as the tracks in the east ditch area could act as conduits for the migration of contaminants. At best, 4,000 feet of unlined rail trenches would complicate the drainage characteristics of the site. At worst, they would facilitate the leaching and dispersal of existing contaminants and any by-products of the rail operations. Once again, the Proponent has not designed for or even addressed this consideration.

NET's purported mitigation measures are vague. The Proponent has represented, and the SEA's September 30 letter assumes, that the facility "would not handle hazardous materials." However, the enumeration of acceptable commodities includes a suspiciously vague catch-all: "and any other products which can be transported in intermodal containers." At an industrial site already polluted with an assortment of contaminants, it is vital that any proposal for redevelopment be as detailed as possible. Many unconsolidated building materials contain unreported hazardous substances. Materials "which can be transported in intermodal containers" may contain chemicals that are hazardous or that, in the event of a rail spill, could combine with contaminants already present in the soils and groundwater at this site to create new

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environmental hazards. The cumulative effect from such an incident could only complicate ongoing investigation and remediation. (See Comments of Conservation Commission and Fire Chief.) The proponent should not be given carte blanche to accept any cargo, and the STB should not reply upon NET's vague assurance that the Project will not interfere with or impede Olin's remediation work or obligations at the property or the surrounding site.

2. Compatibility with Existing Land Use Requirements.

In order to minimize further degradation of its drinking water resources, Wilmington has enacted a groundwater protection bylaw. The protection district includes portions of the Project site. While all of the restrictions and requirements of that bylaw should be observed at the site, the Project is not in compliance. (See Comment of Building Inspector, with attached Bylaw §6.6) Likewise, the proposed sprung structures would require a variance from the requirements of Wilmington's existing Zoning Bylaw.

The project site also is subject to an outstanding Order of Conditions issued to Olin by the Wilmington Conservation Commission in 2000 and extended in 2003. That Order contains 58 special conditions, including requirements for Section 401 water quality permits and for compliance with monitoring and clean up conditions prior to any transfer of the Olin property. (See Comment of Conservation Commission)

3. Traffic/Safety.

The Project would have significant traffic impacts. NET claims that a rail-based operation would divert truck-to-truck traffic among other area warehouses and thereby reduce overall traffic. Its projected 200 trips per day nonetheless would more than double the volume of truck traffic at several troublesome intersections in Wilmington, presenting public safety hazards and congesting traffic in that area. While it would not fully resolve those hazards, it would be necessary to reconstruct one of those dangerous intersections – Woburn and Eames Streets. In its Response to Wilmington's previous comments on its Environmental Report to the STB, the Proponent has misstated what was required for a previous redevelopment proposal. Instead of committing to procure the engineering design and contract for the reconstruction work and to negotiate and fund the necessary land acquisition, the Proponent merely offers to place \$50,000 in escrow. (See Comments of Police Chief, Director of Planning, Superintendent of Public Works.)

4. Air Quality.

NET incorrectly assumes that a facility with a rail component will create less air pollution than a truck only operation. Yet, the project may involve the use of diesel locomotives grandfathered from current clean air standards and therefore more polluting than equivalent truck



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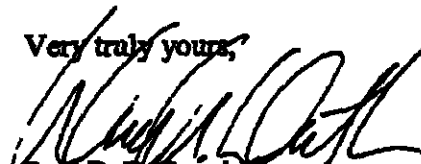
transportation. These locomotives would be idling or backing up on Project tracks for considerable time, increasing and concentrating the polluting emissions at the site. The Proponent has not quantified this impact, which deserves additional review. (See Comments of Director of Public Health and Assistant Town Manager.)

5. Conclusion

For all of the reasons set out in these materials, Wilmington urges ICF and the SEA to carefully scrutinize the Eames Street Project and to fully consider the concerns and recent site developments which NET has not addressed and cannot adequately mitigate.

We appreciate your attention to these matters and welcome any questions you may have.

Very truly yours,



Paul R. DeRensis  
Daniel R. Deutsch

DRD/lsc  
Enclosures as stated.

cc w/encl: Michael Caira, Town Manager

# EXHIBIT B

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 34797**

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Petitioner for  
an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail Carrier on  
Tracks and Land in Wilmington and Woburn, Massachusetts**

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**VERIFIED STATEMENT OF MICHAEL R. BEGONIS**

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1. My name is Michael R. Begonis. I have served as the Chief of Police of the Town of Wilmington, Massachusetts since November 2005. I previously was Deputy Chief and have been a Wilmington police officer since 1988.

**NOISE:**

2. NET has proposed to transload waste and other materials from trucks into approximately 25 rail cars each day at the Olin Superfund site on Eames Street (the "Site"). NET has indicated that this train will arrive between the hours of 1-5am. NET has asserted that the nearest residential development is 1300 feet distant.

3. During the early morning hours, noise carries much further. There is little competing noise from motor vehicle traffic and businesses to muffle the noise during those hours. NET's submission does not indicate at what time of day or night these materials will be off-loaded and or transferred to and from trucks.

4. The vehicles necessary to re-load the materials will be equipped with backing signals that emit a loud beeping signal when backing up. The buckets utilized to scoop up the materials deposited are



made of metal. When they clash with the sides of the trucks and rail cars they will be loading, further noise will be emitted into the neighborhood.

5. I am aware of reports that the rail line that NET proposes to utilize and expand, and that continues on to the City of Lowell, Massachusetts, is a conduit for noise. I live a short distance away from it. It has not been unusual for noise from the Site to travel up this rail line. When Brewster Lumber Yard was in operation, there were frequent noise complaints from that operation. Many times over the years, noise complaints would be attributed to Eames St. businesses. Noise complaints also were attributed to a soft drink company in that area that was performing work during the early morning hours.

#### **TRAFFIC:**

6. Speed limits for Eames Street are as follows:

##### **EAMES STREET EASTBOUND:**

*Beginning at a point 160 feet from Route 38, thence easterly on Eames Street:*  
0.27 miles at 30 miles per hour  
0.12 miles at 20 miles per hour  
0.22 miles at 25 miles per hour ending at Woburn Street;  
the total distance being 0.61 miles

##### **EAMES STREET WESTBOUND:**

*Beginning at a point 50 feet from Woburn Street thence westerly on Eames Street:*  
0.21 miles at 25 miles per hour  
0.12 miles at 20 miles per hour  
0.30 miles at 30 miles per hour ending at Rte 38.  
The total distance being 0.63 miles

7. The Department file reflects information from Prem Kapor of the Mass Highway (781-641-8310) that the Eames Street Bridge was designed by Fay Spofford and Thorndike to carry:

20 Ton trucks with two axles

25 Ton trucks with three axles

36 Ton trucks with five axles.

NET apparently has not warranted that trucks exiting the Site and traveling towards Woburn Street on Eames Street and crossing this bridge will be weighed on site to comply with the capacities of this bridge. The Massachusetts Highway authorities require specific authority to exceed those capacities.

**\*\* per Mass Highway District Four \*\***

"Should a truck exceed these loads, which is crossing the bridge, they must apply for permission giving the distance between the axles and each axle weight of the vehicle in question, to the Bridge Engineer, 10 Park Plaza, Boston, MA. Many cities and towns do apply for this permission for their fire equipments when the equipment loads are exceeding these statutory load limits "

8. Five-axle trucks are usually 53 to 58 feet long. Presently, trucks of a much smaller overall length are having extreme difficulty making the right hand turn from Eames Street onto Woburn Street. In connection with NET's STB petitions, I have parked on Ox Bow to observe activity there. Tractor-trailer trucks existing Eames Street onto Woburn Street Southbound have to traverse far into the westbound lane of Eames Street to make this turn. (\*\*Avg Auto is approximately 14ft).

9. Additionally, this intersection (Eames and Woburn Street) is intersected by another road known as Ox Bow Drive. A school bus is in this intersection Monday through Friday in the am and mid afternoon picking up and dropping off students. NET's proposed operation would contribute to an *already overburdened intersection and directly affect the safety of motorists, residents and school children.*

10. Traffic surveys were conducted by my office in connection with Wilmington's review of NET's previous STB petition. A survey conducted on 8-23---8-24-2004 from 5am-5am showed:

**WOBURN STREET WEST TURNING ONTO EAMES ST      2646 Vehicles**

**EAMES STREET TURNING ONTO WOBURN STREET 2651 Vehicles**

**TOTAL VEHICLES ENTERING/EXITING EAMES ST. 5,297 vehicles**

There are presently 20 driveways, to homes, businesses and one street that intersects with Eames Street along its entire length from Main Street to Woburn Street.

A traffic survey conducted from 9am/8-24 to 9am 8/25/2004 showed:

TRUCK COUNT'S TURNING FROM EAMES ONTO WOBURN SOUTHBOUND there were: 855 trucks. Includes all trucks from 2 axles through 5 axles.

TURNING FROM WOBURN STREET ONTO EAMES WESTBOUND there were: 813 Trucks comprised of two axles through 5 axles.

WEST BOUND there were: 813 trucks comprised of two axles through 5 axles.

There were a total of 1668 trucks entering and exiting this intersection during a 24-hour period from 8-24 9 am thru 8-25-2004 9 am

Peak time frame in morning 6 am-9 am on 8/25/2004 a total of 205 trucks entered Woburn Street from Eames Street.

6 am-9 am on 8/25/2004 a total of 168 trucks entered Eames Street onto Woburn Street

4 pm-7 pm on 8/25/2004 a total of 125 trucks exited Eames Street onto Woburn Street

4 pm-7 pm on 8/25/2004 a total of 175 trucks turned from Woburn Street onto Eames Street.

This is a total truck count of 673 trucks turning and exiting this intersection between these peak hours.

This does not include the number of trucks that travel down Woburn Street without making a turn or entering Eames Street.

11 Additionally, on 8/25/2004, during the timeframe of 8:15 am through 8:30 am Department personnel observed trucks exiting Eames Street on Woburn Street. A 53-foot truck with a 15-foot tractor pulling it approached the intersection. It was indicating a turn to go southbound from Eames Street on Woburn Street. He was trying to make his way to Presidential Way to enter Rte 92 It was then observed making the right hand turn onto Woburn St (SB). It had to venture into the WB Lane of Eames Street to make this turn. In doing so, he crossed all the way over into the NB Lane of Woburn

Street and also crossed over the NB Lane fog line. By the time he had straightened out his tractor into the proper lane (SB) he had arrived at the driveway to Advanced Automotive Technology located 779 Woburn Street. (This property includes the house on the corner.) This particular truck traveled approximately 130 feet from the intersection with Eames before the tractor ended up in its proper lane. The box truck took another (estimated) 35 feet before it was wholly within its proper lane.

Likewise, the Department observed another two box trucks with tractors have to perform the same turning maneuver to be able to properly make this turn southbound onto Woburn Street. The third truck as it was about to turn, a line of traffic had stopped close by the intersection with Ox Bow Drive. This necessitated hand signaling to proceed NB on Woburn St so enough room would be available for this third box truck to make the turn.


12. The NET project would result in 200-400 additional large truck trips per day over these streets and through these intersections that immediately surround the Site and that already are overburdened by existing truck traffic. The proposed dramatic increase in traffic would create new traffic hazards, logistical problems, and enforcement burdens for the Wilmington Police Department. From that standpoint alone, NET's truck-to-rail project would not be in the public interest.

  
Michael R. Begonis  
Chief of Police

**VERIFICATION**

I, Michael R. Begonis, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on this \_\_\_\_ day of August 2007.

  
Michael R. Begonis  
Chief of Police

# EXHIBIT C

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 34797**

**New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Petitioner  
for an Exemption from 49 U.S.C. § 10901 to Acquire, Construct and Operate as a Rail  
Carrier on Tracks and Land in Wilmington and Woburn, Massachusetts**

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**VERIFIED STATEMENT OF GREGORY ERICKSON**

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1. My name is Gregory Erickson. I have served as Director of the Wilmington Board of Health for the past 22 years. There is a long history of chemical spills, air pollution incidents, citizen complaints, and enforcement actions in the small industrial area near the Olin Corporation's Superfund site on Earnes Street. The number and severity of complaints and environmental problems that plague this small area are substantial and deserve serious consideration. The operation of a truck-rail facility will exacerbate all of the existing conditions.
2. It will be impossible to conduct the kind of operation proposed by NET without, at the very least, violating noise standards. Residential properties are nearby. Based on past and present experience, one can assume that citizens' complaints will be forthcoming for noise created at the site. Citizen complaints will result in required enforcement action by the Wilmington Board of Health.
3. On this point, NET's Submission of Supplemental Information, like the STB's Environmental Assessment in the earlier STB proceeding, discusses noise impacts using a

standard of 1300 feet distance to affected residences, and concludes that there will be no noise problems. This conclusion has no basis in reality. The standard in the Commonwealth of Massachusetts, set by the Department of Environmental Protection (DEP), is that the sound levels cannot exceed 10 decibels (dB) over background as measured *at the property line of the site*, not 1300 feet away. Under this standard, a truck-rail operation would constantly be in violation. On various occasions in recent years, enforcement action has been taken and citations with fines have been issued for a single truck delivery at a nearby location. This has been a common occurrence in this neighborhood. At early morning hours (those hours when rail activity is proposed), the sound levels will be very high relative to the background levels. Noise at these times will not be tolerated by the citizens, nor by the Board of Health.

4. In addition to the DEP policy, the Town of Wilmington has its own policy which is even more restrictive than that of the DEP. In accordance with Section 122-125 of Chapter 111 of the Massachusetts General Laws, the Board of Health is required to investigate all nuisances and take appropriate actions, though local ordinance does not establish a decibel standard for noise. When it is determined that any noise is a nuisance, the nuisance must be abated. Failure to abate the nuisance is a criminal offense and is enforced with citations and fines, and when necessary by criminal complaint in the Woburn District Court. This Director is very familiar with this process as it needs to be used routinely. My experience is that all nuisances are abated, with the action of the court. The result is that many businesses have left the area as they cannot operate without disturbing the peace and quiet of the community in that area.

5. What is more troubling, however, is the attempt to establish a new high-risk industrial activity at this site at this very critical time. Chemicals from the 51 Eames Street site have contaminated the aquifer and caused the majority of the Town of Wilmington's water supply to

become unusable for the distant future. Five of the nine Wilmington water supply wells have been closed due to the chemical contamination from the 51 Eames Street site. NET has asserted that the project is not in the Zone II (Aquifer Recharge Area). That assertion is incorrect according to the official Department of Environmental Protection Zone II Map, Olin and the off-site contamination is clearly within the aquifer protection area. There is little dispute that the severe contamination in the Town's water supply wells came from the Olin site.

6. The site must remain inactive until all site assessment activities have been completed. The possibility of new contamination and new responsible parties will complicate the already complex problems at the Site. Among other concerns, NET plans to store salt (sodium chloride) on site. Both sodium+ and chloride- are constituents of the Olin site contamination that has been drawn by the Town's water supply wells.

7. The STB may not be aware that this contamination problem has migrated off site and covers hundred of acres of land in the Town of Wilmington. It may take many years to fully assess the affected area. The site assessment, as well as human health assessments presently in progress, need to be completed before further potential risks can be fully understood. The introduction of new chemicals in such large quantities brings with it the potential for catastrophic environmental damage. On this point alone, the project should be denied, and I emphatically put that comment to you.

8. I would also point out that although in general air pollution may be reduced by replacing certain truck traffic with rail service, it is also true that the Town of Wilmington would be the host community of the NET rail service and would not only bear the burden of the air pollution caused by that rail facility, but would also be the focal point of all truck traffic bound for the rail service. The benefit of reducing air pollution generally is not justified when all of that air



pollution will be now concentrated in an area already suffering from a high number of documented air pollution violators.



Gregory Erickson, R.S., C.H.O.  
Director of Public Health

**VERIFICATION**

I, Gregory Erickson, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on this 29<sup>th</sup> day of August 2007.



Gregory Erickson

**CERTIFICATE OF SERVICE**

I, Daniel R. Deutsch, hereby certify that on August 29, 2007, I served the foregoing

**REPLY OF TOWN OF WILMINGTON  
TO PETITIONER'S SUBMISSION OF  
SUPPLEMENTAL INFORMATION**

by causing a copy thereof to be delivered via first class mail, postage prepaid, to.

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